

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 451 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DUNGARBHAI NANJIBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 451 of 2001
MR MAGANBHAI BAROT for MS SADHANA SAGAR for Petitioner No. 1
MS KRISHNA U MISHRA for Petitioner No. 1
MRS HANSABEN B. PUNANI, AP for Respondent Nos.1 & 3
MR BC DAVE for Respondent No. 2
-

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/03/2002

ORAL JUDGEMENT

Leave to amend granted.

2. Petitioner, who is the father of deceased-Kanthaben, has filed the present petition before this Court requesting to implead the respondent No.2-Parsottam Jethabhai Makwana @ P.J.Makwana Paljibhai Jethabhai Makwana as accused in the proceedings. In support of his request, an application dated 28-4-1999 given by the deceased-Kanthaben to PSI of Mahila Police Station, Karanj, Ahmedabad is annexed as Annexure-A and also copy of statement of Ashwinaben.

3. In this matter, rule was issued on 25-6-2001 which was duly served on the respondents. Thereafter, matter could not be proceeded further. Today also, in the first sitting, none was present and hence, it was adjourned. Thereafter, learned counsel for the petitioner, Mr.Maganbhai Barot has drawn my attention that recording of the evidence of the Sessions Case No.233 of 2001 is already fixed on 14-3-2002 and, therefore, he wants to proceed further in the matter and hence, matter be taken up. Therefore, a message was sent to call Mr.B.C.Dave, learned counsel appearing for the respondent No.2 pursuant to which, Mr.Dave has remained present in the Court. Mrs.Hansaben Punani, learned APP appearing for the respondent Nos.1 and 3 is also present. Thereafter, with the consent of learned counsel appearing for the respective parties, matter is heard.

4. Heard Mr.Maganbhai Barot, learned counsel for the petitioner, Mr.B.C.Dave, learned counsel for the respondent No.2 and Mrs.Hansaben Punani, learned APP for the respondent Nos.1 and 3.

5. Learned counsel for the petitioner has drawn my attention that sessions case arising from Naranpura Police Station I.C.R.No.238 of 2001 has been committed to the Court of Sessions and has been numbered as Sessions Case No.233 of 2001 and is allotted to learned Addl. Sessions Judge, Ahmedabad City in which plea of the accused has already been recorded on 14-2-2002 and matter is adjourned to be taken up on 14-3-2002 for recording of the evidence. Learned counsel for the petitioner has also argued that there is a prima-facie evidence on record to involve the present respondent No.2 in the crime in question and though it is an impartial investigation, investigating officer has cited Aswinaben, the daughter of deceased-Kanthaben, as a witness, but her statement is very clear to involve the respondent No.2 in the offence in question. But he has not been shown as accused in the offence in question and, therefore, present petition has been filed. He has submitted that

Sec.319, Cr.P.C. is very clear on this point and, therefore, he has requested to pass appropriate order or direct the Sessions Court to decide the matter since Sessions Court is having jurisdiction to do the same under Sec. 319 of the Code of Criminal Procedure.

6. Mr.B.C.Dave, learned counsel for the respondent No.2 has argued that there is no evidence worth the name to involve the respondent No.2 in the crime in question. He has also raised other questions.

7. Facts remain that plea of the case has been recorded but recording of the evidence is not yet started but it will be recorded on 14-3-2003 as matter is taken on the said date. Sec.319, of Cr.P.C. reads as under:

"319. Power to proceed against other persons appearing to be guilty of offence:-(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed."

Hence, it is clear that under Sec.319, Sessions Court has got power to implead any person as accused including the witness during the course of trial. Since according to learned counsel for the petitioner, plea is already recorded and it is the beginning of trial, Trial Court should decide the above issue in view of the statement of witness Ashwinaben, who has been cited as a witness in the charge-sheet by the prosecution either on 14-3-2002 or thereafter as and when it thinks fit in view of the statement of Ashwinaben or evidence of Aswinaben or other evidence on record. Hence, the following order is passed:

Learned Addl. Sessions Judge, Ahmedabad City, who is conducting the trial of Sessions Case No.233 of 2001 arising out of C.R.No.I-238 of 2001 registered at Naranpura Police Station is directed to decide the above point at appropriate stage in light of Sec.319, Cr.P.C. Whatever observation made by this Court in this order will not come in the way of the parties while deciding the above referred matter or the Sessions Case. Parties are at liberty to raise all the possible contentions which are available to them under the law. The petition stands disposed of with the aforesaid observation and direction. Rule is discharged. Direct service is

permitted.

(R.P.DHOLAKIA, J.)
radhan/